

2018

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Government amendments to the Health (Improving Abortion Access)
Legislation Amendment Bill 2018**

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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Minister for Health and Wellbeing
19 September 2018**

Introduction

This explanatory statement relates to the Government amendments to the Health (Improving Abortion Access) Legislation Amendment Bill 2018 (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the ACT Legislative Assembly.

This explanatory statement must be read in conjunction with the Bill, explanatory statement to the Bill and the Government amendments moved by the Minister for Health and Wellbeing. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative statement of the meaning of a provision, this being a responsibility of the Courts.

Overview of the Bill

The Bill presents Government amendments to the Health (Improving Abortion Access) Amendment Bill 2018. The Bill seeks to achieve a number of goals:

- a. Enable ACT Health consumers to access phone-based medical abortion services in the ACT instead of having to access services in New South Wales;
- b. Clarify the Health Act 1993 to ensure consumers of medical abortions by phone are not inadvertently criminalised for self-administration;
- c. Make medical abortions more accessible in the ACT by:
 - i. removing the requirement that all abortions take place in ‘approved facilities’;
 - ii. allowing health practitioners capable of prescribing medical abortions - doctors and nurse practitioners - legally able to do so, without the requirement to designate their place of work an ‘approved facility’;
- d. Provide a mechanism for appeal where a Minister does not approve a medical facility to perform abortions, via the ACT Civil and Administrative Tribunal (ACAT);
- e. Clarify and strengthen the ‘no obligation’ provision to ensure that conscientious objectors to abortions state their objection and, in line with expected clinical practice, patients in emergency situations needing abortions as part of their emergency treatment are not discriminated against; and
- f. Change ‘abortion’ to ‘termination’ in the law.

The amendments will ensure that the ACT comes in line with best practice in other jurisdictions in Australia. Importantly, the Bill improves access to abortion for women. Amendments provide clarity regarding definitions, conscientious objection and clinical terminology. Additionally, the bill will allow future policy work regarding improving affordability and consideration of Nurse Practitioners as prescribers.

Abortion in the ACT

In the ACT, abortion is considered to be a health issue, not a criminal matter, and is listed in Part 6 of the ACT's *Health Act 1993* (Health Act).

In the ACT, abortion services are not provided in either public or private hospitals. The only exception to this is, pregnancies in the second trimester, usually occurring where there are significant foetal abnormalities, which are performed at The Canberra Hospital.

The ACT Government offers a range of services which include, government-funded and non-government/privately operated services, which assist women in their reproductive health choices. These services include but are not limited to:

- education and information;
- sexual health testing and treatment;
- access to contraception;
- counselling and information in relation to pregnancy;
- pre- and post-natal care and support;
- termination of pregnancy;
- assisted reproductive technology; and
- cervical screening.

Types of abortion

There are two recognised types of abortion:

- Medical abortion is a method of abortion that uses medication;
- Surgical abortions involve a general or local anaesthetic and a surgical procedure.

OUTLINE OF PROVISIONS OF THE GOVERNMENT AMENDMENTS TO THE BILL

Clause 2

The commencement date is set to 12 months beginning on its notification day or earlier by written notice of the Minister.

This will allow for further work prior to commencement in order to consult with the profession on implementation, ensure appropriate supports and treatment pathways are in place, and consider options around affordability.

Clause 4

The use of the word "Termination" is opposed on the grounds that it the word "Abortion" is preferred by health consumers and health practitioners.

Clause 5

The word “termination” is to be replaced with “abortion” throughout the Bill.

Clause 5

Proposed new section 80

Replace the definitions in the Bill with those that accurately reflect the terminology used by health practitioners.

Clause 5

The term “termination drug” is to be replaced with “abortifacient” throughout the Bill. This reflects the correct terminology for these medications.

Clause 5

Proposed new section 81(1)(c)

References to “nurse practitioner” will be omitted from the Bill. The Government will investigate options to enable nurse practitioners to prescribe, supply and administer abortifacients. This will involve consultation with the Therapeutic Goods Administration, the Nursing and Midwifery Board of Australia, peak professional bodies of both the nursing and medical professions, and other key stakeholders relevant to the profession of nursing and, in particular, nurse practitioners.

This section has been expanded to enable conscientious objection to prescribing an abortifacient as well as its supply or administration, as was proposed in the original Bill.

Clause 5

Proposed new section 84A(2)

The word “termination” is to be replaced with “abortion” throughout the Bill.

This section has been expanded to ensure that authorised persons must not refuse on the grounds of conscientious objection, to assist or treat to a person requiring medical attention because of an abortion.

Clause 5

Proposed new section 84A(3)

This section has been expanded to provide protection to authorised persons who, because of conscientious objection, refuse to prescribe an abortifacient as well as supply or administer an abortifacient, as was proposed in the original Bill.

Clause 5

Proposed new section 84A(4)

This section has been expanded to require that an authorised person who refuses to prescribe an abortifacient because of conscientious objection, must advise the person requesting the drug of this reason. The original Bill proposed that this requirement apply only to authorised persons who supply or administer an abortifacient.

Clause 5 Proposed new section 84A(4)

The term “drug or termination” is to be replaced with “abortifacient or abortion” throughout the Bill.

Proposed new clauses 6A, 6B and 6C

The terms “an approved medical” and “the approved medical” are to be replaced with “a protected” and “the protected” throughout the Bill.

The definition of “prohibited behaviour” is expanded to include prescribing, supplying or administering an abortifacient in a protected facility. This better reflects the activities that may take place in the protected facilities.

Clause 7

Proposed section 85(1) definition of “prohibited behaviour”

This clause is opposed as the word “abortion” is to be used throughout the Bill.

Proposed new clause 7A

This section has been expanded to better reflect the activities undertaken in a protected facility. Terminology has also been updated consistent with earlier amendments.

Clause 8

This clause is opposed as the word “abortion” is to be used throughout the Bill.

Proposed new clauses 8A to 8H

These amendments will ensure that the terminology used in clauses 8A to 8H, is consistent with that used throughout the Bill.

Clause 9

This clause is opposed as the word “abortion” is to be used throughout the Bill.

Clause 10

Proposed new section 130(2)

The word “terminations” is to be replaced with “abortions” throughout the Bill.

Clause 13

Dictionary, note 2, proposed new dot points

References to “nurse practitioner” will be omitted from the Bill. The Government will investigate options to enable nurse practitioners to prescribe, supply and administer abortifacients. This will involve consultation with the Therapeutic Goods Administration, the Nursing and Midwifery Board of Australia, peak professional bodies of both the nursing and medical professions, and other key stakeholders relevant to the profession of nursing and, in particular, nurse practitioners.

Proposed new clause 13A

Inserts into the Dictionary a new definition into the Bill of “abortifacient”.

Clause 14

Inserts into the Dictionary the word “abortion”, consistent with the terminology used throughout the Bill.

Clause 15

Proposed new definition of approved medical facility

The word “terminations” is to be replaced with “abortions” throughout the Bill.

Clause 16

Inserts into the Dictionary the term “surgical abortion”, consistent with the terminology used throughout the Bill.